

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2154.04
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	July 19, 2004
DATE OF REPORT:	August 13, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	October 1, 2004

**COMPLAINT ISSUES:**

Whether South Bend Community School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically failing to implement the following accommodations:

- a. providing an extra set of books for use at home;
- b. using an assignment notebook and checking the student's assignment notebook daily;
- c. providing study outlines one week before a test;
- d. providing a back up note taker or peer buddy
- e. limiting multiple choice items on tests, assignments or projects; and
- f. assisting the student to highlight important information.

511 IAC 7-25-7 by failing to conduct an additional evaluation and convene the case conference committee (CCC) within 60 instructional days of the date of the parent's written consent.

511 IAC 7-27-7(a) by failing to provide progress reports to the parent as described in the student's IEP.

511 IAC 7-27-4(c) by unilaterally revising the student's IEP without benefit of convening the CCC committee.

511 IAC 7-27-4(a)(3) by failing to convene a CCC at the request of a parent in order to make changes or corrections to the student's IEP.

**FINDINGS OF FACT:**

1. The Student is thirteen years old and is eligible for special education and related services as a student with a traumatic brain injury and communication disorder.
2. The Student's individualized education program (2003-2004 IEP) that was in effect from August 28, 2003, to June 10, 2004, was developed at a case conference committee (CCC) meeting on April 29, 2003. The CCC reviewed the 2003-2004 IEP on September 12, 2003. The CCC revised the 2003-2004 IEP on November 6, 2003, by adding speech/language services. The CCC again revised the 2003-2004 IEP on February 24, 2004, by adding a special education learning strategies class (and reducing the Student's time in general education by one class per day) as well as by adding more speech/language services. However, with respect to accommodations/modifications, the 2003-2004 IEP remained the same throughout the 2003-2004 school year.

3. As an instructional accommodation/modification, the 2003-2004 IEP called for keeping an extra set of books at home. The School has provided no documentation that an extra set of books was provided.
4. As an instructional accommodation/modification, the 2003-2004 IEP called for checking the Student's assignment notebook each day. The School did not retain the Student's assignment notebook or teachers' notes at the end of the school year and, therefore, has no documentation that the Student's assignment notebook was checked daily. The Complainant acknowledges that the assignment book is at the Student's home. As of April, 2004, the Student's teachers began using a weekly Assignment Check-Up sheet to alert the Student (and Complainants) of missing assignments. The Assignment Check-Up sheet, suggested by one of the Student's general education teachers, was neither required by nor prohibited by the 2003-2004 IEP.
5. As an instructional accommodation/modification, the 2003-2004 IEP called for study outlines to be provided. Handwritten notations indicate that this accommodation was to be provided in all academic classes one week before tests. The School did not retain study outlines or teachers' notes at the end of the school year and, therefore, has no documentation that study outlines were provided to the Student.
6. As an instructional accommodation/modification, the 2003-2004 IEP called for a back-up note taker that is a peer buddy. The IEP Conference Notes indicate that notes could also be provided by a teacher or a paraprofessional. The School did not retain the class notes at the end of the school year and, therefore, has no documentation that notes were provided to the Student.
7. As an instructional accommodation/modification on tests/assignments/projects, the 2003-2004 IEP called for allowing retests and limited multiple choice. The IEP form requires an explanation when retesting is allowed, and the Student's 2003-2004 IEP includes the following explanation: "Limit all multiple choice by two if there are 4 answers – only do on the retest." The Complainants submitted one of the Student's math tests as a sample. There are at least four answer choices for each multiple choice problem. However, the math test is identified as a practice test, not a re-test. The School did not retain the Student's test papers at the end of the school year and, therefore, has no documentation that the Student's multiple choice tests were modified when the Student took a retest.
8. As an instructional accommodation/modification on tests/assignments/projects, the 2003-2004 IEP called for the Student to highlight important information. The School's interpretation is that this accommodation did not contemplate instruction or assistance by school personnel. The School did not retain the Student's tests, assignments, and projects at the end of the school year and, therefore, has no documentation that the Student highlighted important information, with or without assistance from teachers or paraprofessionals.
9. On November 6, 2003, the Complainant provided written parental consent for an additional evaluation. The sixtieth instructional day after November 6, 2003, was February 18, 2004. Testing and observation were initiated during December, 2003, and the Additional Evaluation Report was completed on February 17, 2004. The teacher of record (TOR) scheduled a date, discovered a mistake, and re-contacted the Complainants to reschedule the date and time of the CCC meeting. The first available mutually agreeable date was February 24, 2004.
10. The School has a tracking procedure for evaluations, including a form called "Documentation for Overdue Re-Evaluation." This form was utilized to make a record of the reason the CCC was not convened on or before February 18, 2004. The Complainants deny the accuracy of the School's record and specifically deny that the Complainants' availability was the sole cause of the delay in holding the CCC meeting.

11. The 2003-2004 IEP called for quarterly progress reports on goals and objectives that, taken as a whole, addressed assignment completion and organizational skills. The School has provided documentation that the TOR sent (undated) notes to the Student's general education teachers, requesting brief progress reports. The School utilizes a standard form of Progress Report to which a copy of the goals and objectives are to be attached, with notations ranging from "Introductory – no progress is evident" to "Applied – uses skill independently." The School has provided no documentation that information received from the general education teachers was incorporated into the standard form of Progress Report or that progress reports were sent to the Complainants at the required intervals.
12. On May 14, 2003, the Principal sent to the Complainants a package of progress reports from the Student's general education teachers, showing progress for each of the first three quarters of the 2003-2004 school year. The School acknowledges that these progress reports were not sent to the Complainants when required.
13. It is undisputed that the speech/language pathologist (SLP) provided timely quarterly progress reports that notified the Complainants of the Student's progress on each Communication/Language goal and objective of the 2003-2004 IEP.
14. The School has written procedures in place regarding progress reporting. In addition to printed forms for obtaining information from general education teachers and printed forms for reporting progress to parents, the School provides to each TOR a month-by-month list of tasks to be completed by TORs, including tasks related to progress reporting.
15. On March 31, 2004, the CCC reconvened to develop the Student's IEP for the period beginning August 26, 2004, and ending June 8, 2005 (First Proposed IEP). The CCC agreed upon a change of placement involving 50% special education classes (core academic subjects) and 50% general education classes, with a variety of instructional accommodations/modifications, plus speech/language services. At the conclusion of the CCC meeting, the Complainants exercised their right to review the First Proposed IEP and make added comments before providing consent. The Complainant inadvertently signed the First Proposed IEP, indicating agreement with the First Proposed IEP.
16. On April 21, 2004, the Complainants sent a written list of required amendments and corrections. Some of the requested amendments/corrections addressed clerical errors. For example, there was an error in the Student's home address, and the "Summary of Evaluation Results" recorded evaluation data from the year 2000 instead of the data from the additional evaluation that the CCC considered on February 24, 2004. Other requested amendments/corrections sought to add instructional accommodations/modifications. The Complainants assert that each of these instructional accommodations/modifications was discussed and agreed upon by the CCC, and the School does not dispute the Complainants' recollection of the CCC discussion. Similarly, the Complainants sought to add medical information about the Student that was specifically noted at the CCC meeting on March 31, 2004, and the School does not dispute the Complainants' recollection of the CCC discussion. The Complainants pointed out that the Assistant Principal had not attended the CCC meeting, but was listed among the participants (page 2a of 9).
17. It is the School's practice to amend an inaccurate proposed IEP without reconvening the CCC, when parents bring to the School's attention inaccuracies and omissions in the nature of clerical errors.
18. The School made, or attempted to make, the amendments and corrections requested by the Complainants. On June 1, 2004, a revised IEP (Second Proposed IEP) was sent to the Complainants. The Second Proposed IEP incorporated virtually all of the corrections and amendments suggested by the Complainants, except the additional evaluation data was not added or substituted. The TOR placed

his initials next to each of the changes, including 11 additions to the list of instructional accommodations/modifications.

19. In contrast to the First Proposed 2004-2005 IEP, the Second Proposed IEP contained a different list of services/classes in the general education setting and services/classes in the special education setting (page 6 of 9), thereby changing the Student's placement from core academic classes and remediation in special education classrooms (50%) to all general education classes (100%). No initials were placed on this page. Whereas the Least Restrictive Environment page was missing from the First Proposed IEP as presented to the Complainants, the Second Proposed IEP included a designation of the Least Restrictive Environment (page 8 of 9) that had been changed from "special education and related services provided outside of the general education classroom for at least 21% but no more than 60% (21-60%) of the school day" to "special education and related services provided outside of the general education classroom for less than 21% (0-20%) of the school day." No initials were placed on this page. Whereas the First Proposed IEP did not contain the signature of the Assistant Principal among the participants in the CCC meeting (page 9 of 9), the Assistant Principal's signature is found on page 9 of 9 in the Second Proposed IEP.
20. The Complainants returned the Second Proposed 2004-2005 IEP, with a handwritten, signed notation "Not accepted 6/8/04" on the page listing the Student's classes and percentages of time in special education and in general education (page 6 of 9).
21. On June 8, 2004, the Complainants met with the Student's guidance counselor regarding the Student's class schedule. As the guidance counselor had participated in the CCC meeting on March 31, 2004, and knew of the CCC decision, the guidance counselor changed the Student's class schedule to conform to the placement agreed upon by the CCC.
22. The Second Proposed IEP was forwarded to the office of the local director of special education and is the School's official copy of the Student's IEP for the 2004-2005 school year. The Complainants non-acceptance was not forwarded to the local director of special education.
23. The School did not recognize the Complainants' request for amendments and corrections as a request for a CCC meeting or as a revocation of consent triggering a need to reconvene the CCC. The School did not recognize the Complainants' non-acceptance notation as a revocation of consent triggering a need to reconvene the CCC. It is undisputed that the last meeting of the CCC occurred on March 31, 2004.
24. It is undisputed that the Complainants did not request that the CCC reconvene after March 31, 2004.

## **CONCLUSIONS:**

- 1.a. Findings of Fact #2 and #3 indicate that the School failed to establish that the School provided a second set of books for the Student. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to implement the Student's IEP as written.
- 1.b. Findings of Fact #2 and #4 indicate that the School failed to establish that the School provided daily checks of the Student's assignment book. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to implement the Student's IEP as written.
- 1.c. Findings of Fact #2 and #5 indicate that the School failed to establish that the School provided study outlines for the Student. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to implement the Student's IEP as written.

- 1.d. Findings of Fact #2 and #6 indicate that the School failed to establish that the School provided class notes taken by a back-up notetaker. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to implement the Student's IEP as written.
- 1.e. Findings of Fact #2 and #7 indicate that, although the Complainants' sample test does not prove a violation, the School failed to establish that the School provided multiple choice re-tests with a reduced number of answer choices. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to implement the Student's IEP as written.
- 1.f. Findings of Fact #2 and #8 indicate that the School failed to establish that the School provided instruction, assistance, or supervision in use of highlighting important information or that the Student was capable of selecting important information for highlighting without instruction, assistance or supervision. As an IEP incorporates the School's commitments for educational services to be provided, it cannot be presumed that an IEP requires a Student to implement a strategy independently. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to implement the Student's IEP as written.
2. Finding of Fact #9 indicates that the School failed to adhere to the timeline for conducting an additional educational evaluation and convening the CCC. Although the School has procedures in place to track overdue evaluations, Finding of Fact #10 indicates that in this instance the procedure was not an effective management or record keeping tool. Therefore, a violation of 511 IAC 7-25-7 occurred by failing to conduct an additional evaluation and convene the CCC within sixty instructional days of the receipt of a parent's written consent.
3. Finding of Fact #11, #12, #13, and #14 indicate that, with the exception of progress reports provided by the SLP, the School failed to send quarterly progress reports to the Complainants as required by the IEP, despite having procedures in place for reporting. Therefore, a violation of 511 IAC 7-27-7(a) occurred by failing to implement the Student's IEP as written.
4. Findings of Fact #15, #16, #17, and #18 indicate that the First IEP contained clerical errors that the School attempted to correct, in accordance with a practice that is consistent with the intent and purpose of 511 IAC 7-23-2. However, Findings of Fact #19 and #20 indicate that Second Proposed IEP compounded the errors by changing the Student's agreed change of placement, thereby prompting the Complainants to refuse (or revoke) consent. Although Finding of Fact #21 indicates that the Student's class schedule has been changed to conform to the CCC decision, Findings of Fact # 15, #19, and #22 indicate that the School's official copy of the Student's IEP for the 2004-2005 school year is inconsistent with the corrected class schedule and contains other uncorrected errors, and Findings of Fact #15 and #20 indicate that the School does not have written parental consent for the change of placement. Under these circumstances, a CCC meeting was required, and Finding of Fact #23 indicates that the School failed to reconvene the CCC. Therefore, a violation of 511 IAC 7-27-4(c) occurred by unilaterally revising the student's IEP without benefit of convening the CCC committee.
5. Finding of Fact #24 indicates that the School did not refuse a parental request for a CCC meeting. Therefore, no violation of 511 IAC 7-27-4(a)(3) occurred.

**The Department of Education, Division of Exceptional Learners requires the following corrective actions based on the Findings of Fact and Conclusions listed above.**

On or before September 20, 2004, South Bend Community School Corporation shall:

- (a) reconvene the Student's CCC to review and correct or revise the Student's IEP for the 2004-2005 school year;
- (b) develop and implement a system for documenting the implementation of the instructional accommodations/modifications required by the Student's IEP;
- (c) develop and implement a system for documenting the implementation of the progress reporting required by the Student's IEP; and
- (d) investigate the reasons the Student's CCC was not convened to consider the additional evaluation on or before February 18, 2004, and correct the records as needed.

Documentation of compliance (consisting of the Case Conference Summary/IEP, a description of the system for documenting implementation of accommodations and progress reporting, and a copy of the corrected Documentation for Overdue Additional Evaluation) shall be submitted to the Indiana Department of Education, Division of Exceptional Learners, by September 27, 2004.